

EXhibit K

Memo

Subject: Conference call concerning Dry Creek Rancheria Proposed Authorization to Discharge under the National Pollutant Discharge Elimination System

Date: October 6, 2006

Prepared by Ginette Chapman, EPA Region 9 Office of Regional Counsel

Persons participating:

Michelle Moss, Office of Senator Barbara Boxer
John Tinger, EPA Region 9 Clean Water Standards and Permit Office
Jim Vreeland, EPA Region 9 Governmental Affairs
Hugh Barroll, EPA Region 9 Office of Regional Counsel
Ginette Chapman, EPA Region 9 Office of Regional Counsel

Summary of discussion:

John Tinger provided an overview of the Dry Creek Rancheria NPDES permitting process. EPA has issued a proposed permit to the Dry Creek Rancheria Band of Pomo Indians to discharge effluent from its River Rock Casino. The discharges from the band's wastewater treatment plant will allow the band to develop additional capacity at the casino. The proposed permit allows two discharge points. The first discharge would flow off tribal land into a tributary to the Russian River. This discharge would not be allowed during the dry months, although the regional water control board's Basin Plan does allow discharges to the Russian River during the wet season. The second discharge would flow from tribal land to state land in an ephemeral channel that dead-ends at a ditch; at the dead-end, the water would seep into the ground. It is expected that discharges to this channel would only take place during the dry season, when discharges to the Russian River are prohibited.

John explained that the State of California usually has authority to issue discharge permits to projects such as this, but since this proposed discharge is located on tribal lands, EPA is the permitting authority. EPA proposed a NPDES permit about three months ago, and the comment period just ended. There was a fairly high level of public interest and public comments. Approximately 150 people attended a public meeting concerning the permit. A number of the comments were from local landowners. In particular, some of the local vineyards were concerned that they would be affected. The State of California submitted a comment stating that discharges to the ephemeral channel are prohibited by the Basin Plan. EPA met with Congressman Thompson's office during the course of the public comment period.

John explained that the channel discharge would be subject to the Clean Water Act because it is an interstate discharge. The wastewater that the band proposes to discharge will meet standards for drinking water. These standards are partially enforced through the Basin Plan. Impacts to the vineyards will be prevented by water quality standards and discharge prohibitions in the NPDES permit.

Michelle Moss asked about monitoring of the discharges. John explained that monitoring will take place weekly for most parameters. This monitoring will indicate whether the plant is operating correctly. For two parameters, monitoring will take place biannually. Specifically, priority pollutants (toxics) and effluent toxicity tests (where water-dwelling organisms are placed in a sample of the water and their response is evaluated) are conducted biannually. In response to Michelle's question about the frequency of this monitoring, John stated that these tests are conducted biannually because of their high cost and because the potential for toxics from this particular plant, which is small, is considered to be quite low. This monitoring regime is a particularly stringent regime overall.

Michelle asked what would happen if toxics were discovered. John explained if any significant toxics were found, three things would happen: First, EPA would reevaluate and possibly change the permit; second, EPA would increase monitoring; and third, EPA would conduct a toxicity analysis.

Michelle asked whether any of the effluent would be discharged on the vineyards. John said that the discharges would originate on tribal lands, and that the effluent placed in the ephemeral channel would flow off tribal lands. The effluent would pass through a culvert into a ditch, and in that ditch the water would seep into the ground. Because there is a gravel underlayer at that location, the water would directly descend into the water table. There is a vineyard in close proximity to the end of the ditch, and there are a couple of other vineyards in the vicinity.

In response to Michelle's question about whether it was possible for the effluent to directly flow onto the nearby vineyards in a flood or other unusual conditions, John said that the permit would prohibit such an occurrence. If a discharge onto vineyards did in fact occur, an enforcement action under the Clean Water Act could be taken. The band has conducted a study of the level of water that the channel could handle before overflowing. In addition, the EPA is requiring the band to conduct an adaptive management plan to assess the capacity of the channel. Under this plan, the band will monitor its discharges of effluent to the channel and send its monitoring results to EPA. Then EPA will analyze the results, and in light of those results EPA will tailor the allowable discharges to guard against overflows.

John stated that it is normal for the permittee to monitor its own discharges in this manner. EPA's own investigators will also conduct periodic site inspections. In addition, Hugh Barroll noted that EPA has authority under Section 308 of the Clean Water Act to collect any information it needs in order to adequately monitor the discharges.

Michelle asked whether there are any ways the band could avoid discharging to the channel. John explained that the band does not think that it has other options. The band is already recycling the water it currently uses onsite, and the area's hilly topography limits the band's ability to dispose of additional effluent by irrigating fields with it. The other major option would be for the band to haul the effluent off-site, which would be very expensive.

John concluded by explaining that the next step is for EPA to consider and prepare responses to the comments it has received. EPA will then issue its decision in full in several months, probably in early 2007. EPA will not issue any interim or partial decisions before the issuance of the full decision. If EPA decides not to issue a permit to the band, it would be up to the band to decide how it wants to proceed with its development and discharge plans; the permit would simply prohibit the band from making the discharges it has applied to make. Michelle stated that Senator Boxer's office wishes to remain in contact with EPA concerning this matter.